

CONTRACT #13
RFS # 309.01-19412
FA # Pending
Edison # Pending

Treasury
Baccalaureate Education
System Trust (BEST)

VENDOR:
Envision Financial Systems,
Inc.

STATE OF TENNESSEE



DAVID H. LILLARD, JR.

615.741.2956

STATE TREASURER

TREASURY DEPARTMENT

STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

David.Lillard@tn.gov

MEMORANDUM

TO: Fiscal Review Committee

FROM: David H. Lillard, Jr.
State Treasurer

A handwritten signature in cursive script, reading "David H. Lillard, Jr.", followed by a stylized flourish.

DATE: November 10, 2011

RE: ***Summary Letter for Non-Competitive Contract Request - Envision Financial Systems, Inc.***

BACKGROUND

The Tennessee Baccalaureate Education System Trust ("BEST") was established by the Tennessee General Assembly to promote savings by Tennessee residents for the costs of attending institutions of higher education, and for the purpose of making higher education more affordable for the citizens of Tennessee by offering two types of qualified tuition programs: the educational services/pre-paid plan, and the educational savings plan. Pursuant to and in accordance with its enabling legislation, the BEST Board will be offering a new 529 College Savings Plan at the beginning of this upcoming year. In order to make the Plan cost efficient, the Plan needs to be administered internally by BEST staff. As a consequence, it is necessary BEST obtain a recordkeeping system that is or can be tailored to meet the specific needs of the Plan.

I.

DESCRIPTION OF SERVICE DESIRED TO BE ACQUIRED

The Contractor will license to the State its recordkeeping software systems known as PowerAgent529 and PAWeb to enable the State to administer its new 529 College Savings Plan. The Contractor will provide the requisite network management for the licensing of their system, including but not limited to, maintenance, repair and updates, storage, disaster recovery, and remote access and hosting of the PowerAgent and PA web applications. The term of the proposed contract be for five (5) years, commencing on January 5, 2012 through January 4, 2016. The anticipated maximum liability of the contract would be \$2,154,397 as detailed in the attached Supplemental Documentation.

II.

EXPLANATION OF THE NEED FOR OR REQUIREMENT PLACED ON THE PROCURING AGENCY TO ACQUIRE THE SERVICE

As previously stated under "Background", BEST was established by the Tennessee General Assembly to promote savings by Tennessee residents for the costs of attending institutions of higher education, and for the purpose of making higher education more affordable for the citizens of Tennessee by offering two types of qualified tuition programs: the educational services/pre-paid plan, and the educational savings plan. Pursuant to and in accordance with its enabling legislation, the BEST Board will be offering a new 529 College Savings Plan at the beginning of this upcoming year. In order to make the Plan cost efficient, it has been determined the program needs to be administered internally by BEST staff. As a consequence, it is necessary BEST obtain a recordkeeping system that is or can be tailored to meet the specific needs of the Plan. Here, the Contractor's PowerAgent 529 system was designed from the ground up in conjunction with college savings plan administrators to correlate perfectly with the administrative and recordkeeping needs of a 529 college savings plan. The system automates tasks that are essential to a qualified 529 savings plan such as maximum contribution limit calculations and cross plan information sharing to ease plan administration.

III.

NAME AND ADDRESS OF THE PROPOSED CONTRACTOR'S PRINCIPAL OWNER(S)

Mr. Satnam Gambhir and Mr. Tim Kan
18101 Von Karman Avenue, Suite 1420
Irvine, California 92612

IV.

EVIDENCE THAT THE PROPOSED CONTRACTOR HAS EXPERIENCE IN PROVIDING THE SERVICE AND EVIDENCE OF THE LENGTH OF TIME THE CONTRACTOR HAS PROVIDED SERVICE

Envision was founded by Satnam Gambhir and Tim Kan in 1994 to address the transfer agency services' market need for a shareholder accounting system that relies on industry standard open technologies. Envision has grown its business by partnering with firms, listening to their needs and delivering a tailored solution.

The roots of Envision trace back to 1991. Prior to founding Envision, Mr. Gambhir was Vice President of Information Systems at Analytic Investment Management (a subsidiary of United Asset Management in Boston) where he was responsible for the firm's investment management systems. At the same time, Mr. Kan was employed by Stockmate Financial as the chief architect of real-time quotation data feeds used by various brokerage houses. The two met in 1988 when Analytic Investment became a customer of Stockmate Financial.

While working at Analytic Investment, Mr. Gambhir was charged with either updating the existing Analytic shareholder accounting system to accommodate daily accrual funds or creating something new. Mr. Gambhir's review of third party systems found that the market was dominated by a couple of legacy mainframe technology applications. Knowing that mainframe systems would be expensive and inflexible to operate, Analytic made the strategic decision to go in a new direction and leverage the emerging technologies of client-server and relational databases. In 1993, the initial development of Analytic's next generation shareholder accounting system was completed. During this same time period, Mr. Gambhir and Mr. Kan's relationship had grown, which ultimately lead to discussions of going into business together. After exploring different options, the two decided to focus on mutual fund accounting applications. When Mr. Kan's employer, Stockmate, was sold to ADP in 1993 and Mr. Gambhir completed his efforts at Analytic Investment Management, they decided the time was right to implement their business plan.

Envision Financial Systems was officially founded in October of 1994 by Mr. Gambhir, Mr. Kan and investor Alan Lewis. They chose the name "Envision" to capture their discontent with mainframe based technologies and the future they saw for contemporary technology in the financial services market place. As previously stated, Envision's PowerAgent 529 system was designed from the ground up in conjunction with college savings plan administrators to correlate perfectly with the administrative and recordkeeping needs of a 529 college savings plan. The system automates tasks that are essential to a qualified 529 savings plan such as age-based realignments, maximum contribution limit calculations and cross plan information sharing to ease plan administration. Currently, Envision licenses its PowerAgent system to eleven (11) 529 college savings plans; namely:

1. Illinois – Bright Start College Savings Plan Direct Sold
2. Illinois – Bright Start College Savings Plan Advisor Sold
3. Illinois – Bright Directions College Savings Plan
4. New Mexico – Scholar'sEdge
5. New Mexico – The Education's Plan's College Savings Program
6. Texas – Loanstar 529 Plan
7. Texas - Texas College Savings Plan
8. National Prepay
9. Nebraska (State Farm)
10. Alabama – CollegeCounts 529 Fund
11. Alabama – CollegeCounts 529 Fund Advisor Plan

V.

DESCRIPTION OF PROCURING AGENCY EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES

After extensive efforts to identify reasonable, competitive, procurement alternatives, it was determined that Envision was our only viable option. We engaged the services of an

industry expert who provided us with a comprehensive list of entities that provide record keeping services and/or systems to 529 college savings plans. This list included the following parties:

1. Virginia College Savings Plan
2. Utah Education Savings Plan
3. Boston Financial Data Services (BFDS)
4. Upromise
5. Envision

The Virginia College Savings Plan has a Banner System that they discussed with us. While they have allowed other states to use the system, they have not shown an interest in working with Tennessee or pursuing serious discussions with Tennessee. Although we have reached out to them, they have not responded to our efforts absent an initial conversation with us and a document explaining their system.

The Utah Education Savings Plan was very cooperative in responding to us, but they advised that their record keeping system was so specialized and unique to their program needs that they would be unable to allow another state to use it. BFDS has a bias against working with states directly. Instead, they prefer to work with a third-party administrator, which is not a viable option for Tennessee. Additionally, they had concerns about potential program growth and suggested making our prepaid 529 college plan part of any deal. We chose not to pursue BFDS because our prepaid plan accounts could not be part of any deal that we would reach with a record keeper. Record keeping would be exclusive to the new college savings plan. Additionally, it appears as though BFDS is biased against working directly with a state, and since we are going to be our own program administrator, it would preclude them as a potential record keeper for us.

Upromise had indicated they would not want to work with us as a start up plan. Although we reached back out to them relative to their record keeping system, they have not responded. Accordingly, it appears evident they are not interest in working with us. As a consequence, it is our belief Envision is our only viable option. Envision provides record keeping services to college savings plan administrators. They have an "off the shelf" system that can be tailored to meet our specific needs, and they would be able to get the system up and running for us within the needed time-frame, i.e., by January 2012.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Mary Roberts-Krause	*Contact Phone:	(615) 253-3855
*Original Contract Number:	N/A	*Original RFS Number:	N/A
Edison Contract Number: <i>(if applicable)</i>	N/A	Edison RFS Number: <i>(if applicable)</i>	N/A
*Original Contract Begin Date:	N/A	*Current End Date:	N/A
Current Request Amendment Number: <i>(if applicable)</i>		N/A	
Proposed Amendment Effective Date: <i>(if applicable)</i>		N/A	
*Department Submitting:		Tennessee Treasury Department	
*Division:		Tennessee Baccalaureate Education System Trust	
*Date Submitted:		November 10, 2011	
*Submitted Within Sixty (60) days:		Yes	
<i>If not, explain:</i>		N/A	
*Contract Vendor Name:		Envision Financial Systems, Inc.	
*Current Maximum Liability:		N/A	
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY:	FY:	FY:	FY:
\$ N/A	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY:	FY:	FY:	FY:
\$ N/A	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A	
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A	
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A	
*Contract	State:	N/A	Federal: N/A

Supplemental Documentation Required for
Fiscal Review Committee

Funding Source/Amount:				
Interdepartmental:	N/A		Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
N/A		N/A		
Method of Original Award: <i>(if applicable)</i>		N/A		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		N/A		

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide a information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2012	FY: 2013	FY: 2014	FY: 2015	FY: 2016	FY: 2017
License Fee	100,000	151,925	336,836	487,356	557,127	296,853
Shareholder Inquiry	9,000	18,000	18,000	18,000	18,000	9,000
Hosting- PowerAgent 529	3,000	6,000	6,000	6,000	6,000	3,000
Hosting - PAWeb	3,000	6,000	6,000	6,000	6,000	3,000
Remote Desktop Connection	3,000	6,000	6,000	6,000	6,000	3,000
Microsoft SQL server	1,080	2,160	2,160	2,160	2,160	1,080
Offsite Data Back up	2,400	4,800	4,800	4,800	4,800	2,400
Training	4,500					
Implementation	5,000					

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description: See Below	FY:	FY:	FY:	FY:	FY:	FY:
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Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: Envision	FY: 2012	FY: 2013	FY: 2014	FY: 2015	FY: 2016	FY: 2017
	130,980	194,885	379,796	530,316	600,087	318,333

Supplemental Documentation Required for
Fiscal Review Committee

Other Vendor Cost: See below information						
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Proposed savings to be realized per fiscal year by entering into this contract or amendment:

This question is not necessarily applicable for all deliverables. However, based on data from a leading plan in the 529 Industry, the Utah Education Savings Plan (UESP), their recordkeeping system is tailored to their program, and would cost a significant amount of money to build a system from scratch or reprogram their system for our needs. Additionally we were advised that several years ago when UESP evaluated other software systems, the costs were in the \$1 to \$3 million range for initial licensing. Ongoing costs for upgrades and maintenance were 5% to 10% annually. Additionally, by having Envision to provide the hosting services for the new system, approximately \$12,695 would be saved cumulatively through FY 2016, as indicated in the data provided below.

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options:

Envision is the optimal option to obtain a recordkeeping system. Most plans use an off-the-shelf recordkeeping system such as the Envision system, have developed a customized recordkeeping system, or use a record keeping company. We hired an industry expert, who provided to us a comprehensive list of entities that provide record keeping services and or systems to 529 college savings plans that had to possibility of being available to the State of Tennessee. This list included the following parties:

1. Virginia College Savings Plan
2. Utah Education Savings Plan
3. Boston Financial Data Services (BFDS)
4. Upromise
5. Envision

Virginia College Savings plan has a Banner System that they discussed with us. While they have allowed other states to use the system, they have not showed an interest in working with Tennessee or pursuing serious discussions with Tennessee. Although we have reached out to them, they have not responded to our efforts absent an initial conversation with us and a document explaining their system.

Supplemental Documentation Required for Fiscal Review Committee

Utah Education Savings Plan was very cooperative in responding to Tennessee, but they advised that their record keeping system is so specialized and unique to their program needs, that they would be unable to allow another state to use it.

Boston Financial Data Services has a bias against working with states directly- they prefer to work with a Third- party Administrator. Additionally, they had concerns about potential program growth and suggested making our prepaid plan part of any deal. We chose not to pursue BFDS because our prepaid plan accounts could not be part of any deal that we would reach with a record keeper. Record keeping would be exclusive to the new college savings plan. Additionally, it appears as though BFDS is biased against working directly with a state, and since we are going to be our own program administrator, it would knock them out as a potential record keeper for us.

Upromise had indicated that they would not want to work with a start up plan for program management. Although our office followed up with them exclusively relative to their record keeping system, they have not responded, so it appears as though they do not wish to work with Tennessee at all.

That leaves Envision. Envision provides record keeping services to college savings plan administrators. They have an "off the shelf" system that can be tailored to meet our specific needs, and they would be able to get the system up and running for us within the needed time, by early 2012.

The contract will enable the State of Tennessee to license the Envision PowerAgent system, and Envision will host the system for the State of Tennessee. A cost comparison for hosting was performed to compare the amount charged by Envision versus the cost for the State to host the system internally. Please see the analysis provided by the Information Systems Division in the Treasury Department of the comparison of the hosting costs below:

Envision Hosting

Cost	Description	FY12	FY13	FY14	FY15	FY16
Hosting - PowerAgent 529	\$500/month	3,000	6,000	6,000	6,000	6,000
Hosting - PAWeb	\$500/month	3,000	6,000	6,000	6,000	6,000
Remote Desktop Connection	\$50/month per user	3,000	6,000	6,000	6,000	6,000
SQL Server	\$18/month per user	1,080	2,160	2,160	2,160	2,160
Offsite Database Backup		2,400	4,800	4,800	4,800	4,800
	Totals:	12,480	24,960	24,960	24,960	24,960

OIR Hosting

Supplemental Documentation Required for Fiscal Review Committee

Cost	Description	FY12	FY13	FY14	FY15	FY16
Virtual Application Server	\$480/month	2,880	5,760	5,760	5,760	5,760
Virtual Application Server - DR	\$394.08/month	2,364	4,729	4,729	4,729	4,729
Virtual Web Server	\$480/month	2,880	5,760	5,760	5,760	5,760
Virtual Web Server - DR	\$394.08/month	2,364	4,729	4,729	4,729	4,729
Monitoring Fee	\$28/month x 2	336	672	672	672	672
SQL Server	\$400/month	2,400	4,800	4,800	4,800	4,800
SQL Server - DR	\$18.32/month	110	220	220	220	220
Envision Installation Support	20 hrs @ \$250/hr	5,000				
Totals:		18,335	26,670	26,670	26,670	26,670

Key Differentiators

The estimated server costs associated with OIR are about 20% higher those quoted by Envision. OIR charges for stand-by disaster recovery (DR) separate from its production environment, while Envision bundles both of these charges together. OIR charges for SQL Server at the database level, while Envision charges per Treasury user. Envision does require an additional server to support a remote desktop connection from Treasury to their data center, or the cost differential would have been even greater. Over a five year period, the server cost differential would be \$30,000.

The Envision solution includes all personnel costs associated with the installation and ongoing maintenance of the infrastructure environment, while the OIR solution would require Envision staff to assist with the installation, estimated as a one-time charge of \$5,000, and Treasury staff to operate and maintain the environment as shown below:

Cost	Description	FY12	FY13	FY14	FY15	FY16
Treasury Infrastructure Staff	40 hrs/month @ \$30/hr	7,200	14,400	14,400	14,400	14,400

Non-Competitive Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

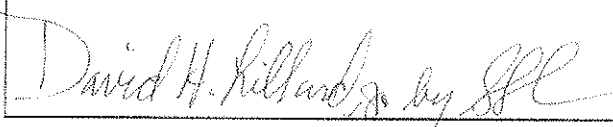
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprrs@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	30901-19412	
1. Contracting Agency	Tennessee Treasury Department	
2. Proposed Contractor	Envision Financial Systems, Inc.	
3. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months	
4. Maximum Contract Cost – with ALL options to extend exercised	\$2,154,397	
5. Office for Information Resources Endorsement – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
6. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
7. Human Resources Support – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
8. Has the contracting agency bought the subject service before?		
<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input type="checkbox"/> Non-Competitive Negotiation		
9. Service Description – brief <u>summary</u> only – do NOT restate the proposed scope of service		
<p>The Contractor will license to the State its recordkeeping software systems known as PowerAgent529 and PAWeb to enable the State to administer its new 529 College Savings Plan. The Contractor will provide the requisite network management for the licensing of their system, including but not limited to, maintenance, repair and updates, storage, disaster recovery, and remote access and hosting of the PowerAgent and PA web applications.</p>		
10. Explanation of Need for or Requirement Placed on the State to Acquire the Service		
<p>The Tennessee Baccalaureate Education System Trust ("BEST") was established by the Tennessee General Assembly to promote savings by Tennessee residents for the costs of attending institutions of higher education, and for the purpose of making higher education more affordable for the citizens of Tennessee by offering two types of qualified tuition programs: the educational services/pre-paid plan, and the educational savings plan. Pursuant to and in accordance with its enabling legislation, the BEST Board will be offering a new 529 College Savings Plan at the beginning of this upcoming year. In order to make the Plan cost efficient, it has been determined that the program needs to be administered internally by BEST staff. As a consequence, it is necessary BEST obtain a recordkeeping system that is or can be tailored to meet the specific needs of the Plan. Here, the Contractor's PowerAgent 529 system was designed from the ground up in conjunction with college savings plan administrators to correlate perfectly with the administrative and recordkeeping needs of a 529 college savings plan. The system automates tasks that are</p>		

Request Tracking #	30901-19412
essential to a qualified 529 savings plan such as age-based realignments, maximum contribution limit calculations and cross plan information sharing to ease plan administration.	
11. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution Mr. Satnam Gambhir and Mr. Tim Kan 18101 Von Karman Avenue, Suite 1420 Irvine, California 92612	
12. Evidence Contractor's Experience & Length Of Experience Providing the Service Envision was founded by Satnam Gambhir and Tim Kan in 1994 to address the transfer agency services' market need for a shareholder accounting system that relies on industry standard open technologies. Envision has grown its business by partnering with firms, listening to their needs and delivering a tailored solution. The roots of Envision trace back to 1991. Prior to founding Envision, Mr. Gambhir was Vice President of Information Systems at Analytic Investment Management (a subsidiary of United Asset Management in Boston) where he was responsible for the firm's investment management systems. At the same time, Mr. Kan was employed by Stockmate Financial as the chief architect of real-time quotation data feeds used by various brokerage houses. The two met in 1988 when Analytic Investment became a customer of Stockmate Financial. While working at Analytic Investment, Mr. Gambhir was charged with either updating the existing Analytic shareholder accounting system to accommodate daily accrual funds or creating something new. Mr. Gambhir's review of third party systems found that the market was dominated by a couple of legacy mainframe technology applications. Knowing that mainframe systems would be expensive and inflexible to operate, Analytic made the strategic decision to go in a new direction and leverage the emerging technologies of client-server and relational databases. In 1993, the initial development of Analytic's next generation shareholder accounting system was completed. During this same time period, Mr. Gambhir and Mr. Kan's relationship had grown, which ultimately lead to discussions of going into business together. After exploring different options, the two decided to focus on mutual fund accounting applications. When Mr. Kan's employer, Stockmate, was sold to ADP in 1993 and Mr. Gambhir completed his efforts at Analytic Investment Management, they decided the time was right to implement their business plan. Envision Financial Systems was officially founded in October of 1994 by Mr. Gambhir, Mr. Kan and investor Alan Lewis. They chose the name "Envision" to capture their discontent with mainframe based technologies and the future they saw for contemporary technology in the financial services market place. As previously stated, Envision's PowerAgent 529 system was designed from the ground up in conjunction with college savings plan administrators to correlate perfectly with the administrative and recordkeeping needs of a 529 college savings plan. The system automates tasks that are essential to a qualified 529 savings plan such as maximum contribution limit calculations and cross plan information sharing to ease plan administration. Currently, Envision licenses its PowerAgent system to eleven (11) 529 college savings plans; namely: <ol style="list-style-type: none"> 1. Illinois – Bright Start College Savings Plan Direct Sold 2. Illinois – Bright Start College Savings Plan Advisor Sold 3. Illinois – Bright Directions College Savings Plan 4. New Mexico – Scholar'sEdge 5. New Mexico – The Educations Plan's College Savings Program 6. Texas – Loanstar 529 Plan 7. Texas – Texas College Savings Plan 8. National Prepay 9. Nebraska (State Farm) 10. Alabama – CollegeCounts 529 Fund 11. Alabama – CollegeCounts 529 Fund Advisor Plan 	
13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives After extensive efforts to identify reasonable, competitive, procurement alternatives, it was determined that Envision	

Request Tracking #	30901-19412
<p>was our only viable option. We engaged the services of an industry expert who provided us with a comprehensive list of entities that provide record keeping services and/or systems to 529 college savings plans. This list included the following parties:</p> <ol style="list-style-type: none"> 1. Virginia College Savings Plan 2. Utah Education Savings Plan 3. Boston Financial Data Services (BFDS) 4. Upromise 5. Envision <p>The Virginia College Savings Plan has a Banner System that they discussed with us. While they have allowed other states to use the system, they have not shown an interest in working with Tennessee or pursuing serious discussions with Tennessee. Although we have reached out to them, they have not responded to our efforts absent an initial conversation with us and a document explaining their system.</p> <p>The Utah Education Savings Plan was very cooperative in responding to us, but they advised that their record keeping system was so specialized and unique to their program needs that they would be unable to allow another state to use it. BFDS has a bias against working with states directly. Instead, they prefer to work with a third-party administrator, which is not a viable option for Tennessee. Additionally, they had concerns about potential program growth and suggested making our prepaid 529 college plan part of any deal. We chose not to pursue BFDS because our prepaid plan accounts could not be part of any deal that we would reach with a record keeper. Record keeping would be exclusive to the new college savings plan. Additionally, it appears as though BFDS is biased against working directly with a state, and since we are going to be our own program administrator, it would preclude them as a potential record keeper for us.</p> <p>Upromise had indicated they would not want to work with us as a start up plan. Although we reached back out to them relative to their record keeping system, they have not responded. Accordingly, it appears evident they are not interested in working with us. As a consequence, it is our belief Envision is our only viable option. Envision provides record keeping services to college savings plan administrators. They have an "off the shelf" system that can be tailored to meet our specific needs, and they would be able to get the system up and running for us within the needed time-frame, i.e., by January 2012.</p>	
<p>14. Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>Please see explanations given under Paragraphs 10 and 13 above.</p>	
<p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p>  11/10/11 </p>	

DAVID H. LILLARD, JR., STATE TREASURER

DATE



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date January 16, 2011	End Date January 15, 2016	Agency Tracking # 30901-19412	Edison Record ID
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Contractor Legal Entity Name Envision Financial Systems, Inc.	Edison Vendor ID
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Service Caption (one line only)
Recordkeeping software system for the Tennessee Baccalaureate Education System Trust

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2012	\$130,980				\$130,980
2013	\$194,885				\$194,885
2014	\$379,796				\$379,796
2015	\$530,316				\$530,316
2016	\$600,087				\$600,087
2017	\$318,333				\$318,333
TOTAL:	\$2,154,397				\$2,154,397

American Recovery and Reinvestment Act (ARRA) Funding: ☐ YES ☒ NO

Ownership/Control

- ☐ African American ☐ Asian ☐ Hispanic ☐ Native American ☐ Female
☐ Person w/Disability ☐ Small Business ☐ Government ☒ NOT Minority/Disadvantaged
☐ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

- ☐ RFP The procurement process was completed in accordance with the approved RFP document and associated regulations.
- ☐ Competitive Negotiation The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
- ☐ Alternative Competitive Method The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
- ☒ Non-Competitive Negotiation The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
- ☐ Other The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.		<i>OCR USE - FA</i>
Speed Chart (optional)	Account Code (optional)	<i>Contract #</i>

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
ENVISION FINANCIAL SYSTEMS, INC.**

This Contract, by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State", and Envision Financial Systems, Inc., hereinafter referred to as the "Contractor," is for the provision of recordkeeping software systems known as PowerAgent529 and PAWeb to enable the State to administer its 529 College Savings Plan, and for the provision of associated maintenance, repair updates, storage, disaster recovery, and the remote access and hosting of such software system applications, as further defined in the "SCOPE OF SERVICES."

The Contractor is for-profit corporation.

Contractor Place of Incorporation or Organization: California

Contractor Edison Registration ID #

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. Software Access and Licenses.

a. PowerAgent Software.

1. Description. The Contractor is the owner of the PowerAgent 529 software which will enable the State to administer its 529 College Savings Plan (hereinafter referred to as the "Plan") by performing subsidiary accounting of Plan participant accounts, accepting deposits from and making withdrawals to Plan participants and their respective beneficiaries, the daily processing of trades with Plan investment providers and transfer agents, and issuing Plan participant statements and tax forms, including, but not limited to, 1099Qs.
2. Access to Software. The Contractor agrees to provide the State on-line computer access, in the manner described in subsection c below, to its PowerAgent 529 software, which software shall include the following:
 - (A) PowerAgent TA Shareholder Recordkeeping System
 - (B) PowerAgent Operator
 - (C) PowerAgent Administrator
 - (D) PowerAgent NSCC Manager
 - (E) Blue Sky Manager
 - (F) Security Manager
 - (G) PowerAgent Job Execute
 - (H) PowerAgent Job Monitor
 - (I) Database Server Manager

The State acknowledges that it must obtain or other license the following third party software in order to fully utilize the above listed software:

- (A) Catalyst Socket Tools – (NSCC Dialer Software)
- (B) Microsoft Windows Server (2003/2008/R2)
- (C) Adobe PDFWriter, PDF995, Neevia docCreator (Optional)

b. PAWeb Software.

1. Description. The Contractor is the owner of the PAWeb software, which is a fully configurable real-time internet portal that will allow Plan participants to inquire, transact and maintain their accounts such as making beneficiary and address changes.

2. Access to Software. The Contractor agrees to provide the State on-line computer access to its PAWeb software in the manner as described in subsection c below.
- c. Host System. The PowerAgent 529 software and PAWeb software (collectively the "Software") shall be accessed via the shared host computer system (as updated and modified) maintained and operated by or on behalf of the Contractor (the "Host System"). The Software will not be physically delivered to the State or installed on any system of the State. The Software and the Host System are collectively referred to as the "System", and access and use of the System shall be a "Service" provided by the Contractor. The Software shall be accessible to the State through the Host System via a secure Internet connection supplied to the State by the Contractor. The System shall be accessible by the State twenty-four (24) hours a day, three hundred sixty-five (365) days a year, except for reasonable down time for back-up and maintenance. In the event the software is not accessible, the Contractor shall initiate System resolution pursuant to Section A.2.e (2) below. The network shall support concurrent access to as many users on the State's network as the State determines. Each such user shall have a separate identification number and dedicated password. The Contractor shall, at its own expense, maintain and keep the Internet connection in good working order and condition so that it will perform its functions properly.
- d. Grant of Licenses. Upon the Contractor's providing the State access to the above System, the Contractor agrees the State shall have a nontransferable and nonexclusive right, revocable in accordance with the terms herein, to use the System solely in connection with the internal operation of the State's business as described in Sections A.2.a and A.2.b above. The State acknowledges that the licenses to use the System granted herein transfers no title or right to the System other than the right to use the System as provided herein, and the State may not sell, transfer, copy, modify, translate, convert to another programming language, decompile or disassemble the System for any purpose. This shall not preclude the State's use of specific items of information directly relating to particular transactions or particular advisory or management situations occurring in the normal conduct of the State, so long as the State does not make any general reproduction or dissemination of data furnished by the Contractor, by electronic or other means.
- e. Observation of System Use. The State acknowledges and agrees that the Contractor may conduct periodic reviews of the State's use of the System. The State further acknowledges that the Contractor will investigate all legitimate reports of abuse or misuse of the System the State or others. The State agrees to cooperate fully with any and all such investigations.

A.3. Maintenance; Problem Resolution; and Consulting Services.

- a. Maintenance. The Contractor shall maintain the System at or above the operative level and shall furnish to the State the following support and services in addition to those specified above:
 - (1) Incorporate any improvements, enhancements and new releases of the System developed by the Contractor that are generally made available to other licensees of the System along with explanatory reference documentation. Such modified software shall not degrade current performance levels and in all respects shall be compatible with then-existing State business uses for the System. Documentation of the existing System shall be changed as necessary for purposes of removing errors, providing consistency of interpretation and/or documenting improvements. All such improvements, enhancements and new releases shall be considered part of the System.
 - (2) Provide to the State updates to any portions of the System released at no cost to the Contractor by other software suppliers. Such updates shall be tested by the Contractor prior to furnishing the same to the State.

- (3) Make changes to the System as are required in order to conform to State or Federal regulations, rules, statutes and court interpretations thereof involving 529 college savings plans.
 - (4) Provide access to the Contractor's online support documentation via the Contractor's website.
 - (5) Diagnose, verify and correct errors, malfunctions and defects in the System. However, if such System errors or malfunctions are a direct result of either an act or omission by the State or of any act or event beyond the control of the Contractor, the State shall pay the Contractor for its services rendered in analyzing the error or malfunction in accordance with Section A.4 of this Contract. At the State's request, the Contractor shall correct any System error or malfunction caused by the State or by the act or event beyond the control of the Contractor and, upon correction of the error or malfunction, the State shall pay the Contractor for such services in accordance with the change order procedures prescribed in Section A.4 of this Contract below.
- b. Problem Resolution. The Contractor shall initiate System resolution within twenty-four (24) hours after telephone notification by the State in the event the website is not accessible. The Contractor shall provide to the State off-site network problem reporting and resolution each business day from 8:00 a.m., Eastern Time, through 8:00 p.m., Eastern Time. The Contractor shall also provide the capability to accept problem reports during those times when the Contractor's problem resolution staff is not available. The State shall submit to the Contractor a listing of output and all such other data which the Contractor reasonably may request in order to reproduce operating conditions similar to those present when the error or defect unreasonably degrades System performance.
 - c. Consulting. The Contractor shall provide to the State off-site telephone support in the form of consultation, assistance and advice on the use and maintenance of the System. The Contractor and the State shall from time to time designate a telephone number for a Maintenance and Consulting Contact Point. The State shall have the right to call such telephone number for assistance with the use or maintenance of the System from 8:00 a.m. Eastern Time until 8:00 p.m. Eastern Time Monday through Friday.
 - d. Telephone and Problem Resolution Contacts. The State shall designate from time to time one person who shall be responsible for coordinating requests for services under this Contract. When appropriate, the Contractor shall work with other State personnel to explain the System and solve problems. The Contractor shall maintain a world wide web page, which contains current problem resolution and consulting contact information. Such information shall include the respective contact names, telephone numbers, telefax numbers, street addresses and e-mail addresses.

A.4. Change Orders.

- a. Scope. Notwithstanding Section D.2 of this Contract, the State may at any time, with written notice to the Contractor, request changes to the System that involve System customization for State specific tasks, development of custom System reports, and modifying System functions and workflow. Any correction of System deficiencies and any capabilities required in this Contract are the Contractor's responsibility to make without charge to the State, provided such deficiencies were not as a result of the State's errors. If the problem requiring the change is due to System deficiencies or any capabilities required in this Contract not as a result of the State's errors, any investigation necessary to determine the source of the problem shall be the responsibility of the Contractor. Otherwise, such investigation shall be charged to the State in accordance with subsections (b) or (c) of this Section below. If the Contractor intends to bill the State for any service requested by the State under this Section A.3, the Contractor shall provide the State with a proposal. In no event more than five (5) business days after receipt of a written request from the State, the Contractor shall respond with a written proposal for completing the service. Said proposal must specify:

- (1) the effect, if any, of implementing the requested service on all other services required under this Contract;
- (2) any specific effort involved in completing the service;
- (3) the expected schedule for completing the service;
- (4) the maximum number of person hours required for the service; and
- (5) the maximum cost for the service, PROVIDED THAT such maximum cost shall not exceed the product of the person hours required multiplied by the appropriate payment rate proposed for the service.

The Contractor shall not perform any such service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Memorandum of Understanding (MOU) between the Contract Parties pertaining to the specified service and shall be incorporated, hereby, as a part of this Contract.

- b. Performance — Subsequent to State approval of an MOU, the Contractor shall complete the required service. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval of the work.
- c. Remuneration — The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved MOU, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Section C.3.d. below, PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual person hours worked to complete the work required by the MOU, not to exceed the maximum cost for the service detailed in the MOU. In no instance shall the State be liable to the Contractor for the cost of any person hours worked in excess of the maximum person hours indicated in or of any amount exceeding the maximum cost specified by the approved MOU authorizing the service. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

- A.5 Training and Operations Manual Services. At the State's request, the Contractor shall provide to the State, at the State's facilities in Nashville, Tennessee, four (4) days of on-site System training for State user and operations staff. The Contractor shall further establish an on-going capability for training new users by providing the State access to the System User's Guide.
- A.6. Disaster Recovery. The Contractor shall maintain a disaster recovery plan that will provide for the continuous and uninterrupted delivery of services hereunder. Said plan shall be in substantially the same form as shall be mutually agreed to by the parties. In the event that any material change to the form of the plan is proposed by the Contractor, the Contractor shall so advise the State in writing. For the purposes of this Paragraph, "material change" shall include, but shall not be limited to, the time required for restoration of services or in the location of the hot-site. The Contractor shall provide notification of an incident to both the Director of the Baccalaureate Education System Trust and to the State's Information Systems Operations Group within two (2) hours after the beginning of operation of the Contractor's Emergency Operations Command Post.
- A.7. Off-Site Back-Up. The Contractor shall back-up the State's data nightly to an off-site location as shall be mutually agreed to by the parties.
- A.8. MicroSoft SQL Servicer Standard. The Contractor shall provide and license to the State the MicroSoft SQL Servicer Standard to enable the State to utilize the System.

- A.9. Implementation of Host Environment. The Contractor shall take all necessary steps to implement the host environment.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning January 16, 2012, and ending on January 15, 2016. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two million one hundred fifty-four thousand three hundred ninety-seven dollars and no cents (\$2,154,397). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
(1) Software Access and License for the PowerAgent Software as described in Section A.2.a above	0 – 25,000 accounts - \$5.00 per account 25,001 – 50,000 accounts - \$4.50 per account 50,001 – 75,000 accounts - \$4.00 per account Over 75,000 accounts - \$3.50 per account <u>OR the following minimum fee, whichever is greater:</u> Contract Year One - \$1,666.67 per month Contract Year Two - \$2,500 per month Contract Years Three – Five - \$3,333.33
(2) Software Access and License for the PAWeb Software as	\$1,500 per month

described in Section A.2.b above	
(3) Training and Operations Manual Services as described in Section A.5 above	\$1,125 per day
(4) PowerAgent and PAWeb Hosting Fees	
(a) Disaster Recovery PowerAgent as described in Section A.6 above	\$500 per month
(b) Disaster Recovery for PA Web as described in Section A.6 above	\$500 per month
(c) Remote Desktop Access for each user of the System as described in Section A.2 above	\$50 per month
(d) MicroSoft SQL Servicer Standard as described in Section A.8 above	\$18 per month
(5) Off-Site Back-Up Services as described in Section A.7 above	\$400 per month
(6) Implementation as described in Section A.8 above	\$5,000 one-time charge

- c. The Software Access and License fees set forth in Sections C.3.b(1) and C.3.b(2) (except for the minimum fees described in Section C.3.b(2)) for each successive year after the first year of the Contract shall be a sum equal to such fees for the immediately preceding calendar year plus a percentage increase of three percent (3%) or the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics published for the month of adjustment over the CPI published for the first month of the previous year of the contract term, whichever is higher. For measurement of the CPI increase, the month of adjustment shall be the month of the anniversary of the effective date of this Contract.
- d. The Contractor shall be compensated for change order services requested and performed pursuant to Contract Section A.3, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to said Section A.3, PROVIDED THAT compensation to the Contractor for such services shall not exceed six thousand five hundred dollars and no cents (\$6,500.00) during the term of this Contract. If, at any point during the Contract period, the State determines that the cost of such change order services would exceed said maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per hour subject to the provisions of Contract Section A.4 and the associated MOU)
Change Orders as described in Section A.4 above	\$150 per hour

NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Budget Officer
Division of Administrative Services
Tennessee Treasury Department
11th Floor, Andrew Jackson State Office Building

502 Deaderick Street
Nashville, Tennessee 37243-0206

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Tennessee Treasury Department, Baccalaureate Education System Trust
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

LaKesha Page, Director
Tennessee Treasury Department
Baccalaureate Education System Trust
P.O. Box 198786
Nashville, TN 37219-8786
lakesha.page@tn.gov
Telephone # (615) 532-5888
FAX # (615) 401-6816

The Contractor:

Scott R. Marcus, Vice President of Business Development
Envision Financial Systems, Inc.
18101 Von Karman Avenue, Suite 1420
Irvine, California 92612
scott.marcus@enfs.com
(949) 579-9232
(949) 579-9508

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the

contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.

- E.7. Title to System.

- a. Title. The Contractor warrants it has complete ownership of the System except for portions of such System licensed from and copyrighted by other software suppliers, and that it has full rights to grant to the State the uses of and the privileges to the System granted herein. Based upon the Contractor's warranty, the State acknowledges that title and full ownership rights to the System licensed under this Contract shall at all times remain with the Contractor. The State agrees that it will not at any time do or cause to be done any act or thing impairing or tending to impair any part of such rights, title and interest. The State agrees that its use of the System shall not create in the State's favor any right, title or interest in the System beyond that of licensee. The State understands and agrees that the System is proprietary information and a trade secret of the Contractor whether or not any portion thereof is or may be validly copyrighted or patented.
- b. Indemnity. The Contractor agrees to indemnify and hold harmless the State and any of its directors, officers, employees and agents against any and all claims, costs, damages and judgments of whatever nature including, but not limited to, costs and expenses incurred by the State in defending any action pertaining to patent, trademark, or copyright infringement, or to violation of any trade secret, license, or proprietary rights, arising from the Contractor's provision of services hereunder; provided the Contractor is given written notice of any such claim and is given an opportunity to conduct its own defense thereof, together with full information and all reasonable cooperation from the State. The State agrees to allow the Contractor to participate in the defense and settlement of any such claim; provided, however, nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s),

the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106. The State shall have final approval of any settlement on behalf of the State which shall be subject to those statutory approvals and procedures for the compromise and settlement of litigation involving the State. In addition to the above indemnity, if any such infringement is held to exist, then the Contractor shall at the Contractor's expense and at the State's option either:

- (1) procure for the State the right to continue using the System, or
- (2) modify the System so that it becomes non-infringing so long as such modifications do not reduce the functionality of the System, or
- (3) replace the System with a non-infringing counterpart.

This obligation shall not be construed to limit the remedies otherwise available to the State in equity, at law, or otherwise.

- E.8. Protection and Security. The State's right to use the System is limited to the license granted and may not be assigned, sub-licensed or otherwise transferred voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of the Contractor. The State shall not disclose, provide, or otherwise make available, in whole or in part, the System to persons other than the State's employees in the scope of their employment. The State shall take all appropriate action with its employees and agents whether by instruction, agreement, or otherwise, to ensure the protection, confidentiality and security of the System, including all associated passwords. The State agrees that it shall not use the information it obtains from the System hereunder for any purpose that would violate the privacy obligation policy and any other terms and provisions of the Gramm-Leach-Bliley Act (15 U.S.C., Section 6801 et seq.), the federal Fair Credit Reporting Act (U.S.C., Section 1681 et seq.), the Federal Drivers Privacy Protection Act (18 U.S.C., Section 2721 et seq.), or any similar state or local statute, rule, or regulation. The State agrees that if the Contractor determines or reasonable suspects that the State is reselling or brokering the System, or otherwise violating any of the laws or regulations described in these terms and conditions, the Contractor may immediately terminate the delivery of, and the license to use, the System.

IN WITNESS WHEREOF,

ENVISION FINANCIAL SYSTEMS, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Envision Financial Systems, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION